

**FACTS FINDING MISSION REPORT
ON THE PREVAILING LAND DISPUTE AT NAMWAWALA VILLAGE IN
KILOMBERO DISTRICT, MOROGORO REGION.**

ORGANIZED AND CONDUCTED BY:

HAKIARDHI AND LEGAL AND HUMAN RIGHTS CENTRE (LHRC)

FROM 24TH TO 28TH MAY, 2009

Participants:

1. Clarence Kipobota (Advocate, LHRC)
2. Rose Mwalongo (LHRC)
3. Isack Isaya (HAKIARDHI)
4. Tumaini Mwailenge (FDT)
5. Shadrack Peter (Channel Ten)
6. Mshana S.Mshana (ITV)
7. Ally Mwashongo (LHRC)

TABLE OF CONTENTS

1.0 INTRODUCTION

2.0 BACKGROUND OF THE LAND IN CONFLICT

3.0 OUR FINDINGS: WHOSE FAULT?

3.1 Actual source of Dispute

3.2 Ownership of the land in dispute

3.3 Validity of Presidential acquisition-*questionable*

3.4 Justifications of villagers' right to the disputable land

3.5 Resort to use of force-*unfounded*

3.6 Legality of criminal charges against victims

3.7 The on going valuation-*disputable*.

4.0 EFFECTS OF THE CONFLICT

5.0 WAY FORWARD/RECOMMENDATIONS

6.0 CONCLUSIONS

LIST OF INTERVIWEES

1.0 INTRODUCTION.

This is the report relating to the facts finding mission conducted by **HAKIARDHI** and **LHRC** as an intervention in response to an outcry from the villagers at Namwawala village in Kilombero district, Morogoro region, owing to the alleged plan of the government to take possession of the village land for investment purposes.

As it is shown in this report, the ongoing government plan is associated with a number of mischievous acts and serious procedural irregularities leading to the violations of Human Rights and fundamental freedoms on the part of small producers, hence calling for an immediate intervention by responsible officials to calm the situation.

These findings clearly indicate that there are many questions with no answers on the part of the government, both local and central in the District level, on the ownership of the said piece of land; procedures as to eviction and compensation, alternative land for the affected population and the validity of such investment at the expense of over 200 school children and about 10,000 people residing in the land under dispute.

Shortly, this report envisages all these controversies as collected from the field through different people who were interviewed and by spot observation.

2.0 BACKGROUND OF THE LAND IN CONFLICT

Generally the land under dispute cuts across four villages, namely Kisegese, Mbingu, Mofu and Namwawala. Its coverage is the whole area in RUIPA valley in Kilombero District.

In tracing the history of the disputable piece of land, the team interviewed villagers at Namwawala village and some top officials in the District level. Our interest was to know who actually owns the said piece of land in conflict, its history and whether or not the land was already given to an investor.

Responding to these questions, the acting District Executive Director (DED), **Eng. Prudence. M. Mtiganzi** together with the District Land Officer, **Mr. John Nzyela** the District Legal Officer, **Mr. Bahati Chonya** and **Mr. Msafiri Mkude** who is a Valuer, while demonstrating the maps and other documents, stated that the land under dispute belonged to the government since early 1970's. That the land was surveyed by SUDECO (Sugar Development Corporation) in 1976 for purposes of growing sugarcane and allied projects, however since that time the project was never effected until recently in 2005 when the successor of SUDECO, Sugar Board of Tanzania (SBT) revived its earlier plan of seeking an investor for sugar project.

According to the District Land Officer of Kilombero, the net project area is estimated to be 9272.54 hectares making a total of 62% of the whole land of the affected villages. That in 1970's the total project area was divided into 6 Blocks A, B, C, D, E and F. However blocks D, E and F were later occupied by people and registered as villages,

therefore SUDECO abandoned them. Hence the remaining project blocks are A, B and C which cuts across the four villages as shown hereunder:

Proposed sugar project area

BLOCK	AFFECTED VILLAGES	NO. OF HECTARES
A	Kisegese	863.53
B	Namwawala & Mofu	6032.55
C	Mbingu & Mofu	2376.46

Net Project Area 9272.54

Source: Kilombero District Land Department.

As it is shown in the chart above, the most affected villages by this project are Namwawala and Mofu with a population of nearly 10,000 people each.

On the question whether SUDECO (now SBT) was and still is the title holder of the said piece of land, the office of the DED categorically denied and claimed that SBT is just a Promoter due to its expertise in the project. This, however, is in sharp conflict with the explanations given by the District Administrative Secretary (DAS), **Evarist Thomas Mbagga** on the 26th May, 2009 who claimed that the owner of the disputed land is SUDECO.

Hence; it is unclear which government entity holds the title to that piece of land; and neither did the District officials show the existence of any **Government Notice** (GN) declaring the land to have been acquired (by the President) for that purpose. The only proof available is the Map indicating the existence of the project area. However, its validity and legality is questionable.

On the part of the villagers who were interviewed to trace the history of the land, one of the interviewees was **Mr. Joachim Lwena (63)** a resident in the area since 1971. He is very conversant with the matter since he was a village chairman for over 4 years from 2000 to 2004 after which he resigned due to health problems.

Mr.Lwena states that before he came on power and soon after his retirement he did not hear anything about the project in the area. That the plan to grow sugarcane started as rumours in 2005 and that no any meeting was conducted involving villagers on the project. That they were only called in 2005 to discuss the land application from Ally Hushum who visited them with **Mr. Pastory K. Ligarama** (their MP).However after their refusal to accept the investor, they were told that the project would still be established and their vacation was a must. They said the District Government told them that every villager should return where he/she came from as the land belongs to the investor.

Similar views were expressed by **Mr. Anyandwile Chalande**, a resident since 1976 who acquired land in the area via the village government. He contended that for all that time,

he did not hear anything about the so called “sugar project”. He was taken by surprise to hear about the investment and the government’s call for valuation of his property.

Generally speaking, the findings show that the history of the alleged project is a nightmare. It is not clearly known by both, District officials and the victims in the disputable land. Its historical background is a fishy kind of a thing requiring clear explanations from its initiators.

3.0 OUR FINDINGS: WHOSE FAULT?

According to our findings in the field and in reference to the explanations given by the District Executive Director (DED) together with other officials under his office; we have come up with the following findings:

3.1 Actual source of dispute

Whereas District officials accuse the village’s committee as the source of an increasing tension in the area, our findings show the opposite. According to the evidence collected from different sources, the real sources of conflict are in two fold; namely *Lack of transparency (openness)* in the process of establishing the said investment, on the one hand, and *non- participatory decision making* in matters affecting villagers’ interest in land. This contravenes the objectives of the new land laws which calls for all citizens to participate in decision making on matters connected with their occupation or use of land¹.

For instance, to date the real owner of the disputable land is not clearly pointed out as well as the expected investor. Also; the fate of the victims is not clearly stated as no alternative land is prepared and or allocated for their settlement after eviction. Above all, villagers complain that they are dictated to endorse and implement the orders from above. This is proved by the letter dated 1/2/2005 with Reference no.KDC/M.40/1 which was written by the then Acting DED, **Mr.O.O.Mpombo** who ordered the chairpersons of the four villages to prepare the minutes of the village councils’ meetings and of the General assembly showing their consent to give land to ILOVO sugar company in their areas. Its title reads: “YAH: UMILIKISHAJI WA ARDHI KWA KAMPUNI YA SUKARI (ILOVO) KATIKA MAENEO YA BONDE LA MTO RUIPA” The minutes were required within 9 days. It is obvious that this order required an unordinary (emergence) village assembly meeting, the practice which is unprocedural.

Due to these reasons, people resorted to establishing the committee during their village general assembly of 31st Jan, 2009 to inquire on their fate. The mandate of the committee, according to villagers, was to seek a clarification of the statement alleged to have been given by the DED on the 27th Jan, 2009 through Radio Pambazuko FM of Ifakara, requiring them to prepare themselves for valuation process by reason that the President was to acquire the said piece of land for investment purposes. This action of the people has resulted into the ongoing tragedy in village-the apprehension of committee members.

¹ See Section 3 (1) (i) of the Land Act, 1999.

3.2 Ownership of land in Dispute.

As to ownership of the land in dispute, the findings show that the alleged owner SUDECO (now SBT) is not the actual owner and neither was it in the past but rather, in the words of the DED, SBT the successor of SUDECO is merely a promoter endowed with such powers due to its expertise in matters relating to sugar projects. Hence, in 1976 it surveyed the land in that capacity as a promoter for the purposes of inviting investors to the said piece of land. As it is discussed below, SUDECO conducted preliminary procedures pending the Presidential satisfaction for acquisition. The process was not completed as required by law. Therefore, it may be summed up that the land still belongs to the villagers unless proved otherwise.

3.3 Validity of Presidential acquisition-questionable.

Presidential acquisition is regulated under **The Land Acquisition Act, of 1967**². Part II of the Act, empowers the President to a compulsory acquisition of land for use by the corporation within the community or agricultural development; but subject to prescribed procedures. There are three stages in the process. The first stage is *Preliminary investigation* of suitable land for the intended purpose. Under this stage the responsible organ, among others conducts a survey together with clearing and setting out boundaries of the proposed land³. This is what SUDECO did in 1976. The second stage is *giving notice of intention to take the land* after the President is satisfied with it. This notice should be within 6 weeks. This is given by the minister on his behalf⁴. And lastly, *taking possession of the land*. This is done after the compensation is completed and due notice as per **Section 7 (1), 8** and Sub-part (b) of the Act above. Generally, procedures under **Section 4 (3) (a)-(d)** of the Village Land Act, 1999 are not proved to have been followed in transferring the disputable land. NB: Namwawala was registered as a village with Reg. NO.23177 since 1993.

The findings have shown that Stage 2 and 3 above were not fulfilled, there is no proof of Presidential acquisition of the land as it is alleged by district officials. Rather, the only evidence available is the survey conducted by SUDECO in 1976 and the Maps showing the planned project (preliminary investigation). It has no backing of the Government Notice as a declaration of an official acquisition by the President of the said piece of land which could stand as a *Caveat* to all other users. Thus, the validity of the alleged acquisition is also questionable because by virtue of **Section 19(1)** of the Act, the president is not compelled to complete the acquisition-he may withdraw as he did in the disputable land.

3.4 Justifications for villagers' rights to the disputable land.

Apart from the findings above, the majority of the people who were interviewed established the justifications for their continued occupation and use of the land customarily, as a village land, and;

² No.47 Of 1967

³ See Section 5 (1),ibid

⁴ Section 6 & 7,ibid

- That the land was allocated to them by the village government of Namwawala through the normal legal procedures. This was also proved by some members of the Village Council who were interviewed who went as far as to establish that this dispute has created division amongst the members of the village council, some side with the District government and some with the victims.
- That the application for land by both, Ally Hushum and that of ILOVO sugar company were made to the villagers and not to SUDECO or SBT (alleged to be the owner), hence raising a presumption or proof that it is their land with a say to it.
- That since 1976 when the survey was made no development was effected by the government for over 29 years after which villagers occupied the said piece of land and developed it until 2005 when SUDECO claimed its ownership. That given their population increase from that time the demand for land has increased hence, as natives, should take precedence over foreign investors.
- That even the district council condoned with their rightful occupation as it has supported them to build two schools; namely *Idandu primary school* (which is already registered with over 200 pupils) and *Mikocheni Primary school* within the disputable land knowing that the land did not belong to the village. Thus, to do justice the benefit of doubt under such situation should lie to the victims, the majority of who are small producers.
- That up to date they have never received any government notice of the president's intention to acquire the land. And that their committee was established for the purpose of ascertaining that but no proof was found.

3.5 Resort to use of force-unfounded

The findings show that the villagers' continued inquiry into the matter has led the district officials to quench the tension by apprehending some of the villagers, especially the ten (10) committee members. The reasons given to justify their actions are in three fold: *first*, that the committee is illegal as it constitutes "*self-appointed trouble makers*". However the findings show that the committee was established by villagers during their lawful village assembly and it constitutes members from all the village hamlets (vitongoji). The villagers who were interviewed stated that it was a lawful committee established on the 31st January, 2009 under the supervision of the village chairperson who later, however, betrayed it.

The second reason is that the said committee did not want to meet the district officials to discuss the matter and end up the conflict. However, they gave reasons in their letter dated 22nd March, 2009 with Ref. no. Tm/KJ/NML/01/009 for their failure to attend the meeting planned to take place on 23rd March, 2009, the reasons which the district officials did not agree with. And the last reason is that the people who are considered as trouble makers are not the residents of Namwawala village but hardcores from Kilombero valley. However, the findings show that some of the victims in the apprehension are

residents since 1970's and held higher posts in the village government. Therefore this is also unjustifiable.

Generally, the ongoing apprehension is unfounded. The findings show that the operation is based on wrong information. One member of the village council went as far as to state that the village government, especially the village chairman does not speak in their interest to district officials.

3.6 Legality of criminal charges against victims.

There are currently two criminal charges filed against some villagers who are considered as trouble makers. These are Criminal case No.112 and No.114 of 2009. And majority other villagers are hunted day and night to face justice, hence they are in the hideout in the forest to escape night arrest. Case 112/2009 involves one Mohamed Libojanga (32) of Idandu Namwawala who is charged for obstructing a police officer in the execution of his duty c/s 243 (b) of the Penal Code, Cap. 16 and the other one case number 114/2009 involves 7 villagers who are charged of an offence of giving false information to a person employed in the public service c/s. 122 (b) of the Penal Code, Cap. 16. The first charge above arose after the victim had inquired the reasons for apprehending his fellow villagers. Police officers apprehended him as well. Both cases are scheduled for hearing on 8th June, 2009.

As it is stated above, the legality of such charges is questionable because there is no proof from the president's office that the villagers gave false information. This ought to have been established by an independent commission of inquiry free from bias. But this was not done. The district officials have become judges of their own wrong.

3.7 The ongoing Valuation-Disputable.

One of the catalysts to the on going tension in Namwawala village is the valuation process which began on 26th January, 2009 involving land, houses, plots and crops in three hamlets namely; **Idandu**, **Boma mzinga** and **Namwawala B**. People complain that they were taken by surprise as there were many issues which officials failed to clarify including the person who could compensate them and an alternative land after vacation. Thus, villagers in idandu hamlet refused completely to participate in the valuation process for want of clarification.

In our findings, we have discovered that the whole process of valuation is disputable because certain legal procedures were not complied with. For instance, the process of valuation ought to be conducted in accordance with procedures in GN No.71 of 2001 which requires the victims to fill in **Form no.69 and 70**. Regulation No.6 provides for special forms which must be filled by victims themselves. Instead, villagers in the disputable land were given only a single sheet of paper with words like "**VAL/NML/019**" without further clarification. Thus, villagers were left in dilemma as to the type, amount, method, and timing of the payment of compensation contrary to **Section 4(8)(a)** of the Village Land Act,1999.

4.0 EFFECTS OF THE CONFLICT.

Generally the on going dispute in Namwawala village has affected the lives of most villagers negatively both socially and economically.

In *social aspect*, the first and foremost effect is on the fate of 200 pupils who are in dilemma. The school was built in the disputable land, and it is not clear if their parents will have an alternative land for resettlement. Also, the findings have shown that village leaders and their subjects are completely not at per. And above all, there is currently family instability in the affected areas as some parents are at all times in a hide for fear of being apprehended.

Economically, production has diminished as most of the land is left uncultivated for fear of losing their crops. Also, it is prohibited to grow permanent crops in the area, and hence a possibility of shortage of food. In our interview with one Bethesda Mwigonja, she proved to have food shortage because of this problem and requested for an urgent intervention

5.0 WAY FORWARD/RECOMMENDATIONS.

After a three days fact-finding mission as indicated above, and owing to the kind of situation we observed during the mission, we are of the settled views that the following should be done as a way forward: -

- i. The villagers need to be assisted [legal assistance] – they are regarded as ignorant of their rights. The top-down decision is unlawfully imposed unto them by the district officials namely the DC and the DED to accept the investment concession of sugar plantation. The current *Village Land Act, Cap. 114 of 1999* usurps all powers from the district authorities over the village land. This is why their decision over the village land becomes unlawful.
- ii. This matter needs to be widely publicized through media and other outlets. LHRC should offer its Pambanua weekly TV programme for this; press conferences can, as well, be staged as soon as possible if the Directors of the two organizations accept; series of well written articles is also great ideal. The final draft should be posted on the website and/or communicated to different stakeholders.
- iii. We need to advise the district council on how to communicate and involve people in decision making in order to avoid clashes. We need to indicate clearly that, the use of force [framing criminal cases, intimidation, etc] is an abuse of public powers/ offices.
- iv. We need to advise the district council to use a third party who is neutral to reconcile the two sides. The local government officials regard everyone in the village who oppose them “*guilty until when proved innocent*”, the situation which is very dangerous for peace and order and make the work of the police even difficulty.
- v. We need to write a letter to the DC and DED and copy the letters to Ministries or/and Prime Minister and/or State House to show legal gaps and unreasonable fond of investors to the detriment of 10,000 villagers [this is without prejudice to our finding that, this land does not belong to SUDECO,

and neither does it belong to any company or specific government entity except the villagers under the village council].

- vi. There are criminal cases number *112/2009* and *114/2009* before Ifakara District Court against some of the villagers. These needs to be defended or at least couch the suspects on points of law to facilitate them to defend themselves. Case *112/2009* involves one Mohamed Libojanga (32) of Idandu Namwawala who is charged for obstructing a police officer in the execution of his duty c/s 243 (b) of the Penal Code, Cap. 16 and the other one case number *114/2009* involves 7 villagers who are charged of an offence of giving false information to a person employed in the public service c/s 122 (b) of the Penal Code, Cap. 16.
- vii. We need also to make follow-up of Government Notices (G.Ns) to ascertain whether that land is gazetted.
- viii. We need also to follow-up with the TIC – Tanzania Investment Centre to see whether the land is legally banked as investment area.

6.0 CONCLUSION.

Generally, we conclude by offering our votes of thanks to the governing bodies of HAKIARDHI and LHRC, specifically the executive Directors, for their joint efforts in fighting against all sorts of Human rights violations, in particular, for the marginalized groups; and for voicing up for the voiceless communities.

THANKS ONCE AGAIN!

LIST OF INTERVIEWEES

A: VILLAGERS OF NAMWAWALA

S/n	Interviewee's Name	Status in the village
1	Eliud A.Kamwela	The Kitongoji Chairman of Idandu
2	Joachim Lwena	A retired Namwawala village chairman-2000 to 2004,a resident since 1971
3	Richard Mwigonja	A member of the Village council,Namwawala
4	Abdallah Mangaya	„ „ „ „ „
5	Suleiman Wala	Ordinary villager since 1977
6	Anyindwile Chalande	Ordinary villager since 1976
7	Bethseda Mwigonja	„ „ „ 1989
8	Johnson Joseph Msuya	„ „ „ 2002
9	Mohamed Libonja	„ „ „
10	Mariam Othman	„ „ „ 1997
11	Rehema Kiponda	„ „ „ 1994
12	Yohana Augustino Malecela	Ordinary villager
13	Juma Rashid Nyangalima	Ordinary villager
14	Mwl.Charles Ngawambwa	Head teacher, Idandu primary school.

B: DISTRICT OFFICIALS

S/n	Name	Official Position
1	Eng.Evarist Thomas Mbagga	District Administrative Secretary,Kilombero
2	Mr.Sembrangwa	OCD-Kilombero
3	Eng.P.M.Mtiganzi	Acting DED,Kilombero
4	John Nzila	District Land Officer,Kilombero
5	Bahati Chonya	District Legal Officer, Kilombero.